State of New Hampshire
OFFICE OF ATTORNEY-GENERAL

COPY in 2635

November 14, 1958

James J. Barry, Commissioner
Welfare Department
State House Annex
Concord, New Hampshire

Dear Mr. Barry:

This is in reply to your letter of October 17, 1958 in which you requested that we review and comment on the opinion of the Supreme Court of Florida in the case of Jackson v. Hall, 97 So.2d 1, photostatic copy of which accompanied your letter.

In this case Jackson sought a writ of habeas corpus to obtain relief from extradition from Florida to Illinois to answer a criminal charge in the latter State for alleged non-support of his minor child. The trial court refused to grant a writ of habeas corpus and the appeal to the Florida Supreme Court followed.

At the time Jackson's extradition was sought no civil proceedings for enforcement of support had been instituted in Illinois as the initiating or demanding State, and the question before the Florida court was whether Jackson could properly be relieved from extradition under Section 88.071 of the Florida statute, which is identical to our RSA 546:6, and which reads as follows:

> "Any obligor contemplated by Sec. 88.061, who submits to the jurisdiction of the Court of such other state and complies with the court's order of support, shall be relieved of extradition for desertion or non-support entered in the courts of this state during the period of such compliance."

In refusing to grant a writ of habeas corpus the trial judge ruled that the section quoted above "is applicable only to cases wherein an order for support under the Uniform Reciprocal Enforcement of Support Law has been promulgated by the demanding State, and that the demanding State has the option of proceeding to extradite the defendant for criminal prosecution in the demanding State." The Florida Supreme Court reversed the decision of the trial judge and held that a person who is about to be extradited under criminal enforcement provisions of the Uniform Reciprocal Enforcement of Support Law may relieve himself from such extradition by voluntarily submitting himself to a court of competent jurisdiction in the State of his residence and complying with such court's

order as to the amount of support he should pay to obligee even though the obligee - resident of the demanding State, has not initiated proceedings under the civil enforcement provisions of the Act. In arriving at its decision the Florida court expressly rejected the decision of the California Supreme Court in Ex Parte Floyd, 43 Cal. 2d 379, 273 Pac.2d 820,823, relied upon by the trial court which held that while either civil or criminal enforcement provisions are available under the Uniform Act, the election as to which should be invoked lies wholly with the demanding State and the obligee,,and that the obligor may not independently institute an action in the responding State in order to defeat the extradition process.

May we point out that the problem before the Florida court would not arise in New Hampshire because under the provisions of the Uniform Act as adopted in this State the Governor may demand extradition for non-support or surrender any person in this State charged with non-support in another State only "in any case wherein the obligee has previously initiated appropriate civil procedures which are still pending in this state or any other state of the United States to compel the rendition of support alleged to be due. . ." RSA 546:5. No language such as this just quoted appears in Section 88.061 of the Florida statutes which in all other respects is identical to RSA 546:5. As adopted in New Hampshire the Uniform Act contemplates that the obligee shall first resort to the civil enforcement remedies and that the criminal enforcement features shall be available only after the civil remedies prove to be fruitless.

The fact that the California and Florida courts arrived at different conclusions and the additional interesting fact that there were dissenting opinions in each case, makes it amply clear that there is a sharp diversion of authority as to when a defendant may avoid extradition for non-support. The writer is personally inclined to the view that the result of the Florida decision is to make it possible for an obligor to obtain immunity from extradition cheaply because, as was said by the California court in Ex Parte Floyd, supra, "without evidence of the conditions, circumstances and needs of the obligee before the court, insufficient or token support payments might suffice to immunize the obligor from extradition."

Moreover we believe that the effect of the Florida decision is to hinder rather than to foster mutual cooperation among the law enforcement officials of the several States, and to hinder rather than to promote comity among the several States themselves. We, personally, adopt the view of the California court that unless, as in New Hampshire, the statutes otherwise provide, the decision as to whether the criminal or civil features of the Uniform Act should be invoked should be one to be made exclusively by the initiating State where the obligee resides.

Very truly yours,

George T. Ray, Jr.
Assistant Attorney General

GTR,Jr/m